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EVENTS IN LEBANON

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BEFORE THE

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UNITED STATES SENATE

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EVENTS IN LEBANON

TUESDAY, SEPTEMBER 13, 1983

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 2:05 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Charles H. Percy (chairman of the committee) presiding.

Present: Senators Percy, Mathias, Pell, Sarbanes, Tsongas, and Dodd.

The CHAIRMAN. We are pleased to welcome our witnesses today.

Increased fighting in Lebanon during the past several weeks has resulted in the loss of hundreds of lives, including four American marines. When our marines were introduced into Lebanon nearly a year ago, our policy toward Lebanon had three principal objectives: First, to support the Lebanese Government in its efforts to reassert its authority throughout that troubled land; second, to facilitate the withdrawal of all foreign forces from Lebanon; and, third, to make certain that Israel's northern border is safe and secure.

The current crisis in Lebanon has led many Americans to question whether the goals are attainable and, if they are, at what cost. It is difficult for many Americans to understand what are American national interests in strife-torn Lebanon.

If the administration cannot articulate sound policy objectives which are designed to protect American national interests, the continuance of our current role in Lebanon will not be sustainable. Maintenance of a consistent foreign policy is dependent upon the support and understanding of the American people and the Congress.

Our hearing today is designed to give the administration an opportunity to explain its policies and to relate them to the three objectives in Lebanon that we have set out, with which I fully concur.

This hearing will also provide an opportunity for the committee to discuss with administration representatives the requirements of the War Powers Resolution. Yesterday I joined with Senator Mathias in supporting the introduction of a joint resolution authorizing continuation of the U.S. Marine contingent in Lebanon. I have decided not to cosponsor the resolution because I have serious questions about the implication of the 6-month limitation built into that resolution, and we would certainly appreciate comments from the administration and from our military representatives today.

But I think the decision to trigger the War Powers Resolution is a necessary and important step. I commend Senator Mathias once again for his initiative.

We are pleased to have representatives from the State Department with us today and Marine Commandant Kelley. We warmly welcome you all.

Secretary Veliotes.

STATEMENT OF HON. NICHOLAS A. VELIOTES, ASSISTANT SECRETARY FOR NEAR EASTERN AND SOUTH ASIAN AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY REAR ADM. JONATHAN T. HOWE, DIRECTOR, BUREAU OF POLITICO-MILITARY AFFAIRS, DEPARTMENT OF STATE; HON. DAVIS R. ROBINSON, LEGAL ADVISER, DEPARTMENT OF STATE; MICHAEL MATHESON, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Ambassador VELIOTES. It is a privilege to appear before the committee again, sir. I would like to introduce all of my colleagues at the table with me: The legal adviser, Davis Robinson, is to my right; and, as you have already noted, we have General Kelley and Adm. Jonathan Howe, who is Director of the Office of Politico-Military Affairs.

To begin, Mr. Chairman, I would like to make a few comments to put the subject of today, which is Lebanon and, more specifically, the role of the marines, the presence of the marines, in a policy context.

First let me read you the principles which underlie our policy toward Lebanon. Let me repeat them. You already stated them: The withdrawal of all external forces; a sovereign Lebanon under a strong central authority, dedicated to national unity and able to exercise control throughout the territory; and security for Israel's northern border.

These principles have not changed in the past several years. They are a constant of our policy. They also form the basis of the May 17 agreement between Israel and Lebanon.

In your opening statement, sir, you noted the importance of the American people understanding what were the American national interests in Lebanon. Our goal is to promote the peace and stability of Lebanon, a key country on the borders of Israel and Syria. This peace and stability is good for Lebanon and we believe it is good for the entire area.

Conversely, a Lebanon which is at war with itself, which is subject to the perpetual conniving of foreign forces, which is occupied by foreign forces, is going to be a perpetual source of instability in the area. This is a tragedy for the people of Lebanon and, beyond that, it will be a major problem until it is resolved with respect to moving forward more broadly on the peace front.

Our marines are in Lebanon to promote our policy goals for Lebanon, which are intimately related to our hopes and expectations for a broader peace in the area. The role of the marines is very much on all of our minds, particularly in the period of the most recent past, when we suffered our first fatalities.

Let me emphasize that our marines are part of a multinational force [MNF]. Our allies, the British, French, and Italians, are committed to our fundamental goals in Lebanon. We share the commitment to

a strong Lebanon and we have all rededicated ourselves to supporting the constitutionally elected Government of Lebanon.

The MNF continues to provide great essential psychological support for the government and its armed forces, and this contributes as well to the greater security of Beirut.

We mourned the casualties suffered by our marines and our MNF partners. This is indeed a tragedy for the forces who were there to contribute to peace in Lebanon and in the area.

The President is determined to take every possible measure to defend our contingent. We have moved to increase the number of marines offshore available to the MNF if necessary.

Now, the underlying premise under which the MNF was deployed to Beirut remains valid: Lebanon is worth saving, for the reasons that I described earlier, and the MNF is playing an important role in that effort. We and the other participants in the MNF are determined to afford our military personnel the best possible protection while they are there.

The MNF has performed magnificently. We can all be proud of their role and show our support for the marines.

The Lebanese Armed Forces are performing better than some expected and predicted. The army is together as a unit, suffering casualties as a unit. This is a very important development and it may mean that at long last the Lebanese can move forward on the road of national reconciliation, which is essential.

We should note that the army has done a very professional job, making good use of the training and equipment provided by U.S. assistance, which has been approved by the Congress.

Now, the politics of Lebanon are very complex. It has a history of power struggle and violence, but for many years the country thrived because political rivlaries were overcome, negotiated out, and a delicate balance was maintained.

We strongly encouraged President Gemayel to persevere in his current effort to engage all of the leaders of Lebanon's communities in a dialog on political unity. We hope to work constructively with all the Lebanese toward a better future with restored political balance.

Now, we are not naive in this view. The difficulties are recognized. But it has worked in the past and it can work again.

One ingredient that will be essential to ultimate success is the negotiated withdrawal of all foreign forces. That is not going to be easy, but this is an achievable goal. Ambassador McFarlane is leading our efforts and he is doing a remarkable job under the most difficult conditions.

Now, at the current time achieving a ceasefire is essential as the first step toward moving along the path that the Government of Lebanon has chosen, the path of political reconciliation. We have had help in working with the Government of Lebanon in trying to achieve this cease-fire. The Saudis have been very active. This is a matter of public record. The Jordanians, Egyptians, and others have been very supportive of our efforts.

Ambassador McFarlane flew to Saudi Arabia yesterday, where he is discussing the latest iteration of a cease-fire proposal. He will then have to move on to seek the support of other parties. I do not know exactly where he will go next.

Now, this will not be an easy task. As we all know, in the Damascus bazaar there is a road whose name is The Street Called Straight. Unfortunately, negotiations in the Middle East rarely follow that path.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

General Kelley.

STATEMENT OF GEN. PAUL X. KELLEY, COMMANDANT, U.S. MARINE CORPS, ACCOMPANIED BY MAJ. JIM NAYLOR, LT. COL. ARTHUR WEBER, AND MAJ. PETER KOSMO, HEADQUARTERS, U.S. MARINE CORPS

General KELLEY. Senator Percy, it is very good to see you again, and I welcome this opportunity to appear before you and the committee.

Last month, Senator, I was privileged to have had an opportunity to visit Lebanon for a 2-day period. While there, I had an opportunity to discuss the Lebanese situation with Ambassador Dillon and with Special Ambassador McFarlane. I had a rather extensive conversation with General Tannous, who is the Lebanese Armed Forces Commander and, I might add parenthetically, Senator, a man of immense professional ability. Even as a marine, I was impressed with his professional view toward the problem.

We discussed at great length the situation in Lebanon, the status of the Lebanese Armed Forces, and the role of the multinational force.

As you might expect, my primary mission in going to Lebanon was to visit the marines and the sailors of the Marine amphibious unit and the amphibious ready group, and also, I might add, the soldiers that are currently there as part of a team, a radar team in support of our marines.

I am happy to report to you—and I mean this very sincerely—that morale is extremely high. The troops knew what they were there for. I talked to sailors aboard ship. I talked to marines in fighting holes. I talked to marines on watch up at the Beirut University. All knew what their job was and they have an exceptional can-do spirit.

So in summary, these young Americans certainly know why they are there, morale is high, and they know what they are doing. I, just this morning, to reinforce this, talked with Colonel Geraghty, who is the commander of our Marine amphibious unit on the ground, and he reinforced what I just said: Morale still remains high.

As you recall, Senator, the initial Marine amphibious unit was withdrawn on September 10 last year, after we had completed the mission in Beirut Harbor of evacuating the PLO. It was ordered back again on September 29 by the President to lend stability to Beirut after the tragedy of the Sabra and Shatilta refugee camps.

Since that time, we have maintained a continuous presence in Lebanon, and every 5 months our Marine amphibious unit with the Navy amphibious ready group arrives on station and we rotate our marines in and out of Lebanon.

The presence mission—and I emphasize that—the presence mission of our forces in Lebanon has remained consistent throughout our par-

ticipation. It was designed, as Secretary Veliotes said, to provide the Government of Lebanon with a visual expression of American interest and concern and support for that government.

Additionally, and I think of great importance, our marines have been involved in assisting General Tannous in the training of Lebanese Armed Forces so they can carry out their mission at a low-level, squad-level type of arrangement.

I would like to reinforce what Secretary Veliotes said. We are there as a part of a multinational force, the French, the Italians, and the British also providing units in response to the Lebanese Government's request for assistance. And so, with traditional modesty, I can say to you that all are elite military forces. They are structured, equipped, and trained for their mission.

Their mission at this time is presence. They have carried out their duties, I do believe, with remarkable restraint and awareness of the cross-cultural sensitivities involved within a population which is ethnically, religiously, and politically diverse.

The rules of engagement under which our forces operate are very carefully crafted to protect our marines, but they are based on the simple fact that every member of the force has the right to defend himself if and when necessary. However, these rules do carefully preclude our forces from taking retaliatory action.

In sum, Senator, the Navy-Marine Corps team, as you well know, is no stranger to Beirut and to Lebanon, having served there in a time of turmoil in 1958. Their current mission, as it did in 1958, remains one of presence, and it involves a coordinated operation with allied nations, which requires considerable and significant military and diplomatic skills on the part of our commanders and their troops.

Thank you, sir.

The CHAIRMAN. Thank you very much.

Would anyone else like to testify before we begin our questions?

Ambassador VELIOTES. No, sir. We are prepared to respond to your questions.

The CHAIRMAN. Thank you very much.

I would just like to look over some of the options that we face and the decisions that we have to make and the consequences of those decisions.

For instance, the New York Times editorialized that it thinks we should withdraw, but withdraw slowly. What would be the likely outcome of that?

Ambassador VELIOTES. Well, I cannot even contemplate that, withdrawing. I do not even know what they were talking about. I do not know how you would address that.

Any kind of withdrawal would be a devastating blow to the Government of Lebanon and to American policy, which is designed to strengthen that government and to create, to encourage, the kind of national reconciliation which is required.

I cannot tell you today that the presence of the marines and the presence of the MNF guarantee the results that we are seeking. But I do believe, I firmly believe, that it is only with their presence that the result can be achieved.

The CHAIRMAN. The commitment of the United States to date has been essential, many of us feel, to continue the viability of the Lebanese

Government. If the Syrians are determined to bring down the government of Amin Gemayel, is it possible for us to prevent it, and what will the costs be?

Ambassador VELIOTES. These are difficult questions and I want to be careful how I respond. Ambassador McFarlane is currently engaged in some rather delicate negotiations. But let me do my best.

I think it depends upon what we are talking about. I do not believe that there is an intention in Damascus to become openly and directly engaged in the military efforts of those who oppose the government today and whom the Syrians are supporting politically and materially.

It seems to me that a major consideration for the Syrians would be how much bloodshed the Lebanese themselves, even those who are working with the Syrians, believe is enough. What we are told, what we hope is the truth, is that those forces in opposition to the government are seeking a meaningful political dialog with the government. If this is the case, one is available. Ambassador McFarlane is working on this.

It is difficult for me to go beyond that. I should say that today I do not see that kind of decision having been made in Damascus.

The CHAIRMAN. I understand that negotiations have been carried on——

Ambassador VELIOTES. Excuse me. Let me go on, sir, and say, speaking personally, that if that decision had been made I think it would lead to very unpredictable consequences. It would not just end the issue. There is no clean-sweep victory in that kind of situation.

The CHAIRMAN. Could you bring us up to date on any negotiations that might be underway to bring about a cease-fire?

Ambassador VELIOTES. Yes, sir. Ambassador McFarlane has been meeting with a variety of the players. As I mentioned earlier, the Saudis are directly involved as well, meeting with not only members of the government but with some of the factional representatives as well, to broker an arrangement whereby there can be a cease-fire.

Now, the cease-fire depends upon a number of factors. One of them in my view is some kind of an equilibrium on the ground, which may have been achieved. If that is the case, it will make it easier to convince the warring parties, particularly the opposition factions who are supported by the Syrians, that it is in their interest to talk rather than fight.

Ambassador McFarlane has been extremely active. I am not sure when he sleeps. When he is not negotiating he is traveling. We remain hopeful that he can be successful in this effort. We should know, I would think, in the next 24 to 48 hours.

Do you have any comment?

Admiral HOWE. It is hard to make predictions, but he is working hard.

Ambassador VELIOTES. Yes, it is hard to make predictions.

The CHAIRMAN. What do you suppose the strategy of Syria is going to be, though? They seem to have strengthened their position. The Israelis having withdrawn to the Awali River, there is a certain amount of chaos in the area that they have vacated now.

What do they have to gain by bringing about a cease-fire, in which their participation would be essential? Do you think their strategy is to just delay and string it out and see what happens?

Ambassador VELIOTES. That certainly is a motivation, and I suspect that is the same kind of consideration that is going on behind the scenes in the United Nations today, where the Lebanese representative is attempting to get quick Security Council action on a cease-fire. Certain parties are clearly dragging their heels.

Admiral HOWE. I think, Mr. Chairman, if I may, there are obviously many factors in the Syrian equation, and it is hard in open testimony to speculate too much about them. Clearly, one of the elements they are watching is the degree of international support that remains for the legitimate Government of Lebanon. Therefore, I am sure they are watching this hearing and they are watching what is happening in the other MNF capitals, what is happening in Italy, England, and France, and generally what the international reaction is as well.

So I think there are many factors. I might just add that I think there is kind of a unifying spirit among those who went in as MNF nations, differing from nation to nation, on the point that we must be strong in our defense of the multinational force and the purpose for which they went into Lebanon.

The CHAIRMAN. General Kelley, I concur with the observations that you have made about our forces there. These were not selected forces. They were just drawn right from our own military. I was impressed with their spirit and with their determination and sense of purpose when I visited there in August 1982.

Lebanon has simply been a country that has been unable to maintain peace and stability at home. It has been unable to demonstrate that it can maintain a semblance of order. And yet we have gone about trying in many ways to strengthen the Lebanese and to give them some effectiveness.

Can you report to this committee what progress has been made, and is there a hope that that progress will continue?

General KELLEY. Senator, let me merely address the military side if I may, because, of course, that is the side that I know best. To reinforce what Secretary Veliotes said about the performance of the Lebanese Armed Forces, one has to put that in a context and realize that General Tannous in a short period of a little over 8 months has put together an army that in the last several days has had its first serious test in battle, and from all reports coming out of Lebanon that I have been able to receive, that army has done very well under the circumstances.

I am firmly convinced and probably egotistical enough—to believe that some of the successes that the Lebanese Armed Forces have had in the past several weeks have been somewhat related to the fact that we do have a multinational force there providing an atmosphere of stability.

This is not the time, in my opinion, to jerk the rug out from General Tannous' Lebanese Armed Forces. I think that probably today we see a better Lebanese Army than we have seen in many years. They have performed a lot better than people would ever have given them credit for.

So I think the progress that I have seen on the military side has been a marked progress, Senator.

The CHAIRMAN. From everything that I have heard, I would agree with you.

Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Ambassador VELIOTES. Mr. Chairman.

The CHAIRMAN. Did you wish to add something?

Ambassador VELIOTES. Yes, sir. I just wanted to say that we have not addressed one of the points that you had asked us about when you were expressing your own misgivings about a resolution that was proposed on the question of a 6-month time limit or whatever that was.

Senator SARBANES. Mr. Secretary, would you pull the microphone a little closer, please.

Ambassador VELIOTES. Of course.

I think we all have to recognize that something like that would almost guarantee that there would be no incentive on the part of those who oppose our policy in Lebanon to seek anything other than a series of violent confrontations, thinking to wait for the time limit and then influence American opinion in the Congress. We think that would be a grave error.

Senator TSONGAS. Are you referring to the Mathias amendment specifically?

Ambassador VELIOTES. That is what I understood the Chairman to have addressed earlier on in his remarks. I guess so.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Secretary, under our constitutional system, who has the authority to commit our troops into areas of hostility?

Ambassador VELIOTES. Senator, obviously the Constitution clearly designates the President as the Commander in Chief of the Armed Forces. I suppose you are going to lead this line of reasoning into war powers, and at this point therefore I would like to ask our legal adviser to join in.

Mr. ROBINSON. Thank you. I am certainly honored to be here.

Let me say, Senator Sarbanes, that that question is one that I believe the Founding Fathers themselves were either unable to resolve or indeed unwilling to resolve. As we know, in the Constitution the President has certain responsibilities and powers as the Commander in Chief of the Armed Forces, and, on the other hand, the Congress has the power to declare war.

My understanding is that historically there has been an effort to avoid having to draw a precise line between the two, to maintain a certain flexibility, and to hope that the two branches would indeed cooperate with each other and avoid constitutional confrontations.

Senator SARBANES. Does the executive branch accept that if the conditions of the War Powers Act are met—and I leave to one side for the moment whether they have or have not been met—the War Powers Act is to be followed and applied?

Mr. ROBINSON. Well, Senator, let me attempt to sort that question out a bit if I might. The executive branch certainly recognizes the obligation to report under section 4 of the War Powers Resolution. The administration filed a report in September 1982 when the U.S. Armed Forces participating in the multinational force were introduced into Lebanon.

Since that time, the administration on a very regular and frequent basis has maintained very close consultations with both Houses of the Congress.

Senator SARBANES. Under what provision of section 4 of the War Powers Act are those reports being filed?

Mr. ROBINSON. Senator, under section 4 of the War Powers Act there is not a requirement that the specific subsection that may be involved be identified. And in fact, since the War Powers Resolution was originally adopted there have been 10 reports submitted under it. Only three of those reports have ever identified a subsection of section 4, and indeed the practice with regard to Lebanon is consistent with the practice that has been followed by both Democratic and Republican administrations.

Senator SARBANES. Well now, were those reports a section 4(a)(1) report, that then brings into play section 5(a)? What is your view on that?

Mr. ROBINSON. Senator, our view on that is that there would be no constructive purpose served in trying to identify, since it is not legally required, which section or subsection under section 4 these filings have been made. As I understand it, this administration wants the cooperation of the Congress. We want to work together with the Congress to achieve a united policy in Lebanon. I understand there are onging consultations and discussions between senior officials——

Senator SARBANES. Now, counselor, I cannot accept that. The act by its own terms is very clear. You might as well come to grips with it and tell us exactly what your position is.

The act says in section 5(b) that if you file a report under section 4(a)(1), within 60 days after it is submitted you must move to terminate the use of armed forces unless certain things are done. Now, you do not contend that that procedure was applicable heretofore with respect to these reports, do you?

Mr. ROBINSON. Senator, I am not sure I understand the question.

Senator SARBANES. Do you have the War Powers Act in front of you?

Mr. ROBINSON. I certainly do, Senator.

Senator SARBANES. All right, let us turn to it. Section 5(b):

> Within 60 calendar days after a report is submitted or required to be submitted pursuant to Section 4(a)(1), whichever is earlier, the President shall terminate any use of the United States armed forces with respect to which such report was submitted, unless the Congress has:
> (1) Declared war;
> (2) Extended by law such 60-day period;
> (3) Is physically unable to meet.

Now, you do not contend that any report pursuant to section 4(a)(1) has been submitted, these reports that you are talking about which would bring section 5(b) into play, do you?

Mr. ROBINSON. Senator, we contend that under section 4, if you have it in front of you, it does not require a statement as to which subsection you are filing under, and that that is a choice which the President may or may not make. In effect, the obligation is to report information, and then the President may in effect come to some conclusion with regard to that information; or, obviously, if the Congress

so chooses to itself reach such a conclusion with regard to that information, that is a prerogative of the Congress.

Senator SARBANES. Well, let us try to get it clear. As I understand it, your position is that the report you have submitted is not a section 4(a)(1) report which would bring section 5(b) into play, is that correct?

Mr. ROBINSON. Senator, no, that is not exactly correct. Our position is that section 4 does not require the President to make a choice between the subsections, that he is simply required to report the facts, and we have complied with that.

Senator SARBANES. Well, why did not the President terminate the use of U.S. Armed Forces within 60 days pursuant to section 5(b)?

Mr. ROBINSON. Senator, again with all due respect, we are of the view that a constitutional confrontation over the meaning of section 5(b) would be an unnecessary and not very productive exercise. The administration has made a decision to work with the Congres, and we would hope that the Congress would no more expect the executive branch to try to deal with these constitutional issues, which even the Founding Fathers chose not to deal with, any more than we expect the Congress to in effect make concessions with regard to fundamental constitutional issues.

Senator SARBANES. Mr. Chairman, I repeat my question to the State Department's counselor: Why did the President, pursuant to section 5(b), not terminate the use of U.S. Armed Forces, in the absence of a congressional declaration of war or an extension by law of the 60-day period?

Mr. ROBINSON. Senator, with all due respect, I believe the only answer I can provide you on that is that the President filed a report in September 1982, as was required under the terms of the War Powers Resolution, and he reported consistent with it as prior administrations have done.

Senator SARBANES. But it is your view that that report is not a report as encompassed within the meaning of section 5(b), is that not correct?

Mr. ROBINSON. Senator, that is not correct exactly, sir. Our position is that we are not going to characterize one way or the other the report.

Senator SARBANES. But you obviously are characterizing it. You either have to characterize it as a report which brings section 5(b) into play or you have to characterize it as a report which does not bring section 5(b) into play. Now which is it?

Mr. ROBINSON. Senator, I think that was exactly the point that I tried to make: The President is not required to choose. He is required to provide information. That we have done, and we have done that with good faith and we have done it throughout this entire exercise.

If the Congress on its own wishes to characterize the information that the President has supplied, if the Congress affirmatively wants to bring about a constitutional confrontation which could possibly lead——

Senator SARBANES. Let me interject right there. The President has to choose, because he files a report and by the provision of section 5(b) within 60 calendar days after the report is submitted the President—

and I am quoting now the statute—"the President shall terminate any use of United States armed forces" unless the Congress has declared war or provided an authorization.

Now, the President has not done that. Therefore, it is the President who has characterized the nature of his report.

I go back, then, to the question with which I opened with the President, and that is, how is this decision going to be made under our constitutional system? The administration is proceeding on the approach that it is simply a decision to be made by the Executive, without the Congress being called upon to make a judgment.

That is clearly not my view. I think the War Powers Act is applicable. I cannot get from you a clear statement on whether the act applies, let alone whether we may differ on the circumstances. I will later get to the question of whether we are in fact in a situation where imminent hostilities are clearly indicated by the circumstances.

Mr. ROBINSON. Senator, if I might comment——

Senator SARBANES. If it were clearly indicated, if imminent hostilities were clearly indicated by the circumstances, would then the President have to report to us and the Congress then have to act within 60 days?

Mr. ROBINSON. The President has to report when the provisions and the subsections of section 4 apply. He does not, however, have to characterize those reports.

Senator SARBANES. But he has characterized it by not acting under section 5(b). He has made that characterization because he has submitted a report, but then not acted according to section 5(b). Therefore, the President himself has characterized the nature of that report as not triggering off the War Powers Act. The Secretary of State in effect has said so.

Mr. ROBINSON. Senator, maybe we could agree to disagree on that, and I could simply say that, with regard to your comment that the Executive has decided to act alone here, in fact that is not the case, and the purpose of section 5(b) as I understand it, to the extent it is an appropriate provision of a statute, is to assure involvement of the Congress in these very important issues.

This administration positively welcomes and supports the involvement of the Congress of the United States in addressing our policy with regard to Lebanon. At this very sensitive moment, we will welcome a statement of support and of united policy with regard to Lebanon.

Senator SARBANES. Well, if the administration welcomes the involvement of the Congress, do I take that to mean that the administration is prepared for the War Powers Act to come into play and for the 60-day calendar period to run, and for the Congress therefore to be called upon to take one of these three acts; otherwise, the involvement cannot continue?

Mr. ROBINSON. Senator, I would again, with all due respect, say that the administration does not see any useful purpose to be served in a confrontational——

Senator SARBANES. No one is trying to get a confrontation. We are trying to get an involvement of the two branches of Government in making a very important decision of the policy of our country.

Let me ask you this question: Has the Congress declared war in this instance?

Mr. ROBINSON. No, sir, the Congress has not declared war.

Senator SARBANES. Has the Congress extended by law the 60-day period?

Mr. ROBINSON. The Congress has not extended the 60-day period. To the extent that it is constitutional, Senator, Congress has not extended the 60-day period.

Senator SARBANES. Is the Congress physically unable to meet as the result of an armed attack upon the United States?

Mr. ROBINSON. I am sorry, sir. That question I did not hear.

Senator SARBANES. Is the Congress physically unable to meet as the result of an armed attack upon the United States?

Mr. ROBINSON. No, sir, it is not.

Senator SARBANES. Thank you, Mr. Chairman.

Admiral HOWE. Senator, may I just interject one thing, not in an expert way and clearly not to answer your question? But I do not think we can resolve your specific questions here.

I would just like to reinforce what counselor Robinson has said, because I have been working very intently on this current situation for a number of weeks, and I just want to reiterate that everything I have heard and my understanding of the intent of the administration is to work very closely with the Congress as we work through this problem.

Senator SARBANES. Well, let me say this very clearly. There is a law on the books. The President is charged by the Constitution to faithfully execute the laws of the land. It seems to me that the situation now which exists brings the War Powers Act into play. If we differ there, I am prepared to discuss that question.

But I cannot even get the counselor to reach that point. In other words, if he wants to argue that U.S. Armed Forces are not in a situation of imminent involvement in hostilities, we can discuss that. That is why I put it to one side at the beginning.

But it seems to me, if the factual requirements of the War Powers Act are met, then the procedure of the War Powers Act applies and that the administration, if those factual requirements are met, ought to come to the Congress, and not play this game. They should submit a report and just say, now it is working and your involvement in having to make a judgment is called upon. The Congress then would have to decide.

It is a very clear position, which I think is consistent with the law. I think there are two separate questions here. One is the substance of the judgment that is made about the involvement, and that is a very difficult and complicated question and I recognize that. The other is the process by which that judgment is to be made.

It seems clear to me that on the second issue the War Powers Act does apply and that we ought to proceed according to the procedures set out in that legislation.

Mr. ROBINSON. If I might, Senator, I would make two or three comments. Again, first, the administration has fully complied with the reporting requirements under the War Powers Resolution.

Second, the President has sworn to uphold the Constitution of the United States, just as you as Members of Congress also have done. We believe that a debate on section 5(b) would not be productive, any more than over the years the debate with regard to section 5(c) would have been productive.

What administrations have said over the years is that we want to cooperate with the Congress. The Supreme Court, just 3 months ago, struck down by a large majority the provisions of a law similar to section 5(c). This administration does not want to get into that kind of debate with regard to the 60 days.

Having frankly personally 3 weeks ago been in Beirut, we are all very sensitive, I am sure, not to want to do anything to increase the risks to the safety of our American personnel in Beirut.

Senator SARBANES. Now, counselor, I am not going to concede to you or anyone else a greater sensitivity on that issue than is held by the Members of the Congress with respect to our men who are involved in that situation. The question is, is the administration going to come to the Congress pursuant to the law and present this judgment to be involved in by the Congress?

Now, we recognize the sensitivity of this issue and I dare say we are as sensitive, if not more sensitive, to it than you are. But the question is: Are judgments of this sort, of involvement of American men, simply going to be made by the President, disregarding the Congress, or is the Congress going to be drawn into making a judgment?

We are elected by the people as well, and we have a role to play under the constitutional system. And it does not help to work through this very difficult issue to take that position.

Mr. ROBINSON. Pardon me, Senator. I said equally sensitive. I was simply trying to say, this administration wants the involvement of the Congress. We affirmatively want your involvement. We do not intend to disregard the Congress.

I am here to tell you that this administration wants the Congress involved. We want your support. We want to have a united front with regard to our policy in Lebanon. We are obviously sensitive to your views and to your constitutional positions, as we hope you are sensitive to ours.

The CHAIRMAN. Senator Tsongas, I wonder if you would mind yielding for just a moment so that I could just ask a question to clarify some of the feelings that we have.

Is it not true, Mr. Robinson, that we have disagreed on whether the conditions of imminent hostilities have yet been met? There have been some disagreements between the Congress and the President, but we had not pressed, up until August 29.

It seems that reasonable people would now conclude that the conditions have changed materially from the first time that the marines landed there a year or so ago.

Mr. ROBINSON. Senator, obviously reasonable men and women can always differ. The point that I was trying to make, with all sincerity and all due respect, is that section 4 itself does not require a characterization, and presumably this President and all prior Presidents who

have been operating under this law have sought very hard not to create a confrontation with the Congress.

We seek to cooperate with the Congress and we see nothing positive or constructive to be gained at this point in this very sensitive and very important matter to get into a big legal debate. We would hope that there would be a debate on the merits of our policy in Lebanon and that the United States Government in both of its branches would proceed united with regard to our policy in Lebanon.

The CHAIRMAN. General Kelley, would you render your judgment to this committee on whether you see now a situation in Lebanon where imminent hostilities are possible?

General KELLEY. Senator, as you know, I am not a constitutional lawyer but a simple infantryman.

The CHAIRMAN. But you do recognize hostilities when you see them, whether they are imminent or not. [General laughter.]

General KELLEY. That was going to be my next point.

The CHAIRMAN. I think this is right in your field.

General KELLEY. We marines, when you talk about hostilities or imminent hostilities, being offensively oriented, think of offensive combat—in other words, moving the combat to the adversary.

Imminent hostilities, under the current situation as it exists, in my view, my professional view, in Lebanon, is not the case as far as the marines are concerned. We have no firm evidence, no firm indication that any of the rockets, mortar, or artillery rounds that have impacted within our perimeter have been specifically designed against marines.

So at this juncture——

The CHAIRMAN. But they were there, and they did happen, whether they were aimed or not.

General KELLEY. Yes, sir; but without being flippant, that would be like saying that because I had an automobile accident, I am not going to go out on the highway anymore. This is part of the environment that exists in Lebanon. It does not represent a significant danger at this time in terms of imminent hostilities to our marines. So I am not really comfortable in getting into a legal or semantical argument over the definition of hostilities.

I will, however, Senator, if I may, just offer a view, a simple view. I do believe that the intent—and again, I emphasize that I am not a constitutional lawyer—I do believe that the congressional intent of the War Powers Act has been served in the sense that there has been enormous dialog that has gone on over the course of our involvement in Lebanon—enormous dialog between the executive and the legislative branches of our Government. I believe this has been done.

My concern—and I totally understand Senator Sarbanes comment, and, Senator Sarbanes, I respect your concern for our marines, and I believe it is a genuine concern—but I do believe that our marines should remain at this juncture in Lebanon, and I am concerned that we could impose what could prove to be a dangerous time constraint that would be misread by our potential adversaries.

Said another way, I think it would encourage hostile forces or forces inimical to the best interests, the life and limb of marines. It would encourage them to be more provocative in an attempt to arouse public sentiment.

Now, I am not suggesting for one moment that that public sentiment alone would influence the Congress, but I am saying that the other side would believe it would, and, therefore, we stand a possibility, remote as it may be, there still is a possibility that hostile forces would use this as an opportunity to up the ante against our marines.

The CHAIRMAN. This is exactly why I urged Senator Mathias yesterday, before he introduced this resolution, to at least strike out that portion of the resolution which would set a timeframe which might send a false signal. A time limit might encourage Syrians to make attacks when this debate comes up again.

I concur with your human judgment and political intuition. You have exactly the same views as I expressed yesterday and why I did not cosponsor the resolution, though in principle I think we ought to take into account the War Powers Act. We have to find some way to work this out.

Senator Tsongas, I appreciate your yielding. This has not been your time. Take whatever time you require.

Senator TSONGAS. Thank you, Mr. Chairman.

Let me just get this straight. The administration is opposed to the Mathias resolution, is that correct?

Mr. ROBINSON. Senator, I believe that that is under review. I would not want to say it is either for it or against it. As I understand, there are very important discussions that are going on between senior members of this administration and very senior Members of the Senate, and also of the House, and I think it is premature, subject to the comments that have been made here with regard to the 6-month period that is in Senator Mathias' proposal as I understand it. But I think it would be premature to otherwise comment upon the provisions of that proposal.

Senator TSONGAS. But both the General and the Secretary have indicated that the 6-month proposal sets into motion dynamics that would encourage the Syrians and others to precipitate events against Americans with the hope of arousing public opinion, with all due respect, General, and the Congress does listen to public opinion, and so I think there is direct linkage on that issue.

Do I take it, then, that the concern that you have is the 6-month provision part and not any other part of it?

And I am speaking to the Secretary.

Ambassador VELIOTES. I have not personally reviewed this. The subject is being handled by others. I was just commenting on Senator Percy's description of it. I do not think that you can deduce from our comments a definitive administration position on the Mathias resolution. I believe this is what my colleague was saying.

Senator TSONGAS. Well, I will not pursue that. I think the message is rather clear.

Let me say that a lot of this discussion is very interesting, but I think we are all adults and have some experience with circumstances where you make a policy decision and then you say to your lawyers, justify my position. We do that all the time in my office, and I would assume that you do it as well.

So that is the exercise that we have engaged in here. The irony of all of this—and I think it is unfortunate—is that you have spoken about

a united policy and a united front which I think is very important, particularly when your soldiers are being killed. The irony is there is a consensus. There is a united position in the Congress on both sides of the aisle as to the substance. That consensus consists of two parts: One, the Marines should not be withdrawn. There is no easy way out of Lebanon. In my opinion, if you come out now, you are going to go back in later under much more adverse circumstances.

The second part of the consensus on both sides of the aisle is that the War Powers Act indeed applies, and that section 4(a)(1) should be invoked.

So you have been presented with a consensus, and rather than seeking to embrace that consensus, you are attempting to destroy it.

Now, this hearing today has been contentious on the policy of being in Lebanon? No. Not one person has mentioned disagreement on the substance. You have picked a fight here, and it is the wrong fight because in my judgment, if you invoke section 4(a)(1) and you come to the Congress, Congress will be supportive, and that to me, General, would give the maximum support morally as well as legalistically to those marines. And why the administration has decided to avoid the recognition that imminent hostilities do in fact exist, I do not understand, most Americans do not understand, and I think most importantly, you have played right into the Syrian hands, because what they want out of all of this is dispute.

You have a consensus there for the picking; you decided not to achieve that. And I guess my question is why not?

Mr. ROBINSON. Well, Senator, let me see if I can answer that.

Senator TSONGAS. This is a political issue and not a legalistic issue, so I address my comments to the Secretary.

Ambassador VELIOTES. May I let my colleague respond first?

Mr. ROBINSON. If I might, Senator, I do think there are legal elements of that. First of all, I would be remiss if I did not say as a professional lawyer subject to the canons of ethics that I give my best opinion on the law, and I do not necessarily follow the policy decisions of my client if I think they are illegal. Fortunately, in this case they are the same, because as I have indicated, this administration has complied with section 4 of the War Powers Act.

Sections 4(a)(1), 4(a)(2), 4(a)(3) are issues of fact, they are factual determinations, and section 4 does not require the President to pick or choose. He may if he wishes.

Senator TSONGAS. Let me ask you this. Is the President required, if in his judgment section 4(a)(1) applies, to state accordingly?

Mr. ROBINSON. Senator, in my opinion the answer to that is no, and this President, President Carter, and President Ford have acted exactly the same in that regard.

Senator TSONGAS. OK. So what you are saying is we may be in a set of circumstances where section 4(a)(1) applies, and yet there is no affirmative obligation on the part of the President to acknowledge that. The Congress cannot acknowledge that. So the law, by definition, is a nullity?

Mr. ROBINSON. No, Senator, I did not say that. In fact, the Congress obviously has the right, as one of the three branches of this Government, if the executive branch fulfills its obligation to report the facts—

and in my humble estimation, this administration has accurately reported the facts, and on a regular basis throughout the last 11 months—if the Congress on its own behalf wishes to choose to characterize a report as section 4(a)(1) and then bring about what in our view as the executive would be a most unfortunate confrontation constitutionally, the Congress may do that.

Senator TSONGAS. But it is only a confrontation if you disagree.

Are you saying section 4(a)(1) does not and cannot apply in the present circumstances?

Mr. ROBINSON. No, Senator, I have not said that. I have simply said that we are not stating that it is or it is not, and that is our right under section 4.

Senator TSONGAS. OK. So the constitutional crisis only arises in those circumstances where there is a disagreement on whether section 4(a)(1) applies, because nothing kicks in unless section 4(a)(1) as opposed to sections 4(a) (2) or (3) apply.

Do you agree with that?

Mr. ROBINSON. Generally, Senator, I would agree with that.

Senator TSONGAS. OK. So if the Congress goes ahead—and I would have strong objection to the administration not doing its responsibility, but if the Congress were to go ahead, you only have a crisis if there is a disagreement over section 4(a)(1), is that correct?

Mr. ROBINSON. Well, you would have a crisis if a fundamental constitutional issue were involved which neither branch wanted to concede. We are saying we do not seek that confrontation. This administration wants to involve the Congress. We want your support. We want you, frankly, to send us lawyers home and look at the merits of our policy in Lebanon and hopefully achieve a unity of purpose which will show the resolution of this country with regard to the unfortunate events that are going on in Lebanon.

That is the President's purpose in this exercise.

Senator TSONGAS. Do you consider the War Powers Act to be on its face unconstitutional?

Mr. ROBINSON. Senator, I would have to go through it section by section. I will tell you certainly we do not regard the reporting requirements in any way, shape or form to raise constitutional questions. Indeed, we believe it is fortuitous and salutary that the Executive, of course, has to report the facts accurately to the Congress.

We see nothing wrong with that at all.

Senator TSONGAS. So you have made no determination that section 4 specifically is unconstitutional?

Mr. ROBINSON. Senator, I would say to the contrary, that section 4 standing alone, there is certainly no constitutional problem with section 4, and I do not believe any administration has ever questioned section 4 standing alone.

Senator TSONGAS. OK. So it is your judgment that if the President were to determine that there were imminent involvement in hostilities, he still does not have an affirmative obligation to trigger the provisions of section 4(a)(1)?

Mr. ROBINSON. He does not have an affirmative obligation to characterize the facts that he reports. He may, if he so chooses, and as I have indicated, in the 10 reports that have been filed since 1975, only 3

of those reports have been so characterized. For example, President Carter did not characterize the hostage raid. President Ford did not characterize other events. This practice of this administration is consistent with both Democratic and Republican administrations, and if the President wishes to characterize, he may do so. If he does not wish to, he does not have to.

If the Congress then wishes itself to take that upon itself and to characterize those facts, that is your right.

Senator TSONGAS. Let me say that that will come as a surprise to the framers of the bill, particularly Senator Javits, I believe. I can imagine if anyone had said to him that when section 4(a)(1) applies, that you can just sit around and decide whether or not it does, or say so affirmatively, that he would say that is not what was intended.

Let me ask you this. If the President decided tomorrow that section 4(a)(1) applied because if we lose our soldiers, our marines, that that is by definition hostilities, would you object?

Mr. ROBINSON. Would I object, Senator?

Senator TSONGAS. Yes.

Mr. ROBINSON. That would be a policy decision for the President to make. In other words, I regard that as one of the questions here that is raised, that it is a legitimate issue, and I recognize that there are constitutional questions here, and this administration is simply seeking to avoid those questions and instead to get on with the business of achieving a united front with regard to Lebanon, and we want the involvement of the Congress—the President wants it.

Senator TSONGAS. Let me just straighten that out. So if the President were to decide tomorrow based on advice from the Republican leadership in the Senate that he would be better off invoking section 4(a)(1), you would not impose any legal objections to that determination?

Mr. ROBINSON. I would think it would be incumbent upon the Attorney General who has the statutory responsibility for interpreting statutes, so it would be his decision, not mine. But certainly as the legal adviser to the Secretary of State, I think it is incumbent upon me at least to point out what the legal questions are.

As you know, for many years there was a lot of question about the constitutionality of the legislative veto provision in section 5(c). The executive branch in all administrations sought not to raise that constitutional issue. We always said the issue would never arise because we are going to cooperate with the Congress. The Executive does not want to get into those kinds of disputes.

Now, a private party brought a suit. It went all the way to the Supreme Court, and only 3 months ago an overwhelming majority struck down a section that is comparable to section 5(c), and with language that I think clearly strikes section 5(c). Now, I recognize that section 5(b) is an even more serious constitutional issue because I think many people for years frankly thought that section 5(c) would not withstand the test of time before the Supreme Court.

I am not saying that there are not very difficult questions here. As far as I know, if you go through the Federalist Papers, you will see that the Founding Fathers themselves specifically refused to draw the line. They did not want to do that. They wanted to have flexibility and

they wanted to assume the good faith of both the Executive and the Congress to work together to seek harmony, to seek unity of purpose. That is what President Reagan wants at this time.

Senator TSONGAS. Let me just finish up with that, the unity of purpose, and again direct my comments to the Secretary.

You have remarkable unanimity—well, I am sure there are people who disagree, but you have remarkable agreement among the vast majority of the Senators who would vote to say that we cannot pull the marines out of Lebanon, which I think would be a very strong statement of support for the people who are there on the ground, and it would send a very clear message to the Syrians that you cannot divide us by the tactics that they were contemplating.

That is a remarkable consensus given the fact that you do not have consensus on almost any other foreign policy area that we have been dealing with. Why not take it? Why not invoke the War Powers Act?

Senator Percy is a Republican and I am a Democrat. I heard what was said in the Democratic Caucus. I know that the Republicans are concerned about that. So why not do the obvious?

Ambassador VELIOTES. Senator Tsongas, we appreciate that there is widespread support in both Houses of the Congress for the substance of our Lebanese policy, including the presence of the marines there. You are asking questions that frankly we cannot respond to. These issues are currently being reviewed by the President, and by the Secretary, and with Members of the Congress.

Now, the hearing today, I believe, is very timely and is very useful, not only for the executive branch and the Congress but for the public at large. That is why we are in an open session. These are important issues. There are differing points of view that have been expressed. We did not come here to be contentious. Obviously you did not seek to be contentious, but we cannot agree. That does not mean this has not been an extremely helpful exchange of views. Certainly, the views expressed by you and other members of the committee have been eloquent and cogent, and I can assure you that they will be registered with the senior members of the executive branch who are currently seized with these issues.

Senator TSONGAS. Let me just say that one of the agonies of coming from my part of the country is in the fall you follow a particular football team, and one of the great statistics is time of possession. We always end up on the short end of that.

Well, we have been here for 1 hour and 20 minutes, and the time of possession on the substance was de minimis. The time of possession on the War Powers Act was almost total.

If nothing else comes out of this hearing, if you could take that message back with you, I think the hearing would be very worthwhile.

Ambassador VELIOTES. Yes, sir. Thank you.

Senator TSONGAS. Thank you.

Senator SARBANES [presiding]. Mr. Robinson, to make sure that we are looking at the same language, would you read for me section 5(b) of the War Powers Act?

Mr. ROBINSON. I would be very happy to, Senator.

Within 60 calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall

terminate any use of United States armed forces with respect to which such report was submitted or required to be submitted or required to be submitted unless the Congress

(1) Has declared war or has enacted a specific authorization for such use of United States armed forces;

(2) Has extended by law such 60 day period; or

(3) Is physically unable to meet as a result of an armed attack upon the United States.

Such 60 day period shall be extended for not more than an additional 30 days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States armed forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

Senator SARBANES. Well, we are looking at the same language, and I apologize to Senator Dodd. I will take just a second.

It is my view, as I have stated, that since that section says the President shall terminate the use of armed forces if he submits a report under section 4(a)(1) and since the President has not done that subsequent to the prior submission of reports, that the President has, in fact, made the judgment that a section 4(a)(1) report is not necessary. Otherwise he would have to then proceed to terminate, according to this provision, so that the real question is, Is a section 4(a)(1) report necessary?

Now, there we can have a discussion.

I take it that it is your position that even if a section 4(a)(1) report is necessary, that section 5(b) does not apply, is that correct?

Mr. ROBINSON. No, Senator, again, my position is—maybe I——

Senator SARBANES. Well, let me rephrase it. If the President sent us a report and said this is a section 4(a)(1) report, he put it right at the top, then would not section 5(b) apply?

Mr. ROBINSON. To the extent section 5(b) is constitutional, yes, sir, it would.

Senator SARBANES. All right, thank you.

Mr. ROBINSON. Senator, since you were so kind as to have me read section 5(b), I think I should again refer to section 4 because section 4 is the section that requires the reporting of certain facts, and you will note under section 4 there is no requirement that the President characterize under which subsection of section 4 he is filing. I believe that was done purposely.

Senator SARBANES. Now, I want to get as much agreement here as we can get. I do not differ with that. The only point I would make is if he, in fact, submits a report under section 4(a)(1), then he has to proceed under section 5(b).

Mr. ROBINSON. He does, Senator, to the extent that that is a constitutional provision by itself, yes, sir.

Senator SARBANES. Thank you.

Senator Dodd.

Senator DODD. Thank you.

If I may, let me take this a bit further. I have been listening to the exchange between the administration and the two Members of Congress here, Senator Tsongas and Senator Sarbanes.

Would you describe for me—and I am frustrated about this—at what point do we break through the limit where, in fact, section 4(a)(1) would become applicable, or is it, in fact, your legal determination

that that is entirely a subjective decision to be made by any President regardless of the circumstances?

Is that your opinion?

Mr. ROBINSON. No, Senator, I am not saying that at all.

Senator DODD. In other words, there are circumstances which would automatically trigger section 4(a)(1)?

Mr. ROBINSON. Senator Dodd, I am not saying that. I am saying that the President has to report facts. If he chooses to characterize them, that is his right, and in 3 of the 10 prior reports, Presidents have, in fact, characterized them. In 7 of the 10 they have not.

Now, if the President makes the decision for whatever reason that he does not wish to characterize those facts which he is not required to do under section 4, as I have rather repeatedly pointed out here, that is his right.

Now, if the Congress wants to characterize those facts and engage in a potential constitutional confrontation that even the Founding Fathers made the decision they did not think was a wise thing to get into, the Congress may do that. That is its right. We are simply saying that at this point this President wants the cooperation of the Congress. We want to involve the Congress. We do not want to get into a debate where we lawyers here can spend hours and hours and hours.

Senator DODD. I just want to understand this. As I understand it, you are telling me that it is your interpretation, your conclusion, your legal opinion, that, in fact, there are no circumstances where the President would be required to invoke section 4(a)(1) because of the facts themselves. In other words, any set of hostilities, if any President, not this one specifically, but any President, if he decides to characterize those facts in such a way as not falling under section 4(a)(1), he does not have to, under any circumstances, comply with the War Powers Act?

Mr. ROBINSON. Senator, he does have to comply with the War Powers Act.

Senator DODD. When?

Mr. ROBINSON. He has to do so within 48 hours.

Senator DODD. Is he doing that now?

Mr. ROBINSON. Yes.

Senator DODD. In other words, there are no fact situations which require him to report under section 4(a)(1)?

Mr. ROBINSON. There are no fact situations that require him to characterize the facts that he is reporting on unless he chooses to do so. If he makes the decision there is no constructive, productive result to be gained by such a characterization, in some instances, within 48 hours, he need not do so. You don't really know what those facts mean. Are they infrequent? Are they irregular? Are they sporadic? What do the facts mean?

Senator DODD. So in other words we could have 40 deaths or 100 deaths and if this President or any other President decided that he did not want to characterize that situation as coming under section 4(a)(1), the War Powers Act would not apply?

Mr. ROBINSON. No, Senator. I am saying the War Powers Act does apply.

Senator DODD. He just does not want to characterize it as that?

Mr. ROBINSON. He has reported under the War Powers Act and has consulted with Congress as he is required to do, but he is not required to characterize them, especially if his decision is that he does not want to get into a constitutional confrontation that is not necessary.

Senator DODD. Regardless of the size or the dimension of the hostilities. Is that correct?

Mr. ROBINSON. He does not have to characterize the facts. He has to report them. And this President has done that acccurately and consistently and fully. That is his duty. That is the requirement of the law, and he has complied with the law.

Senator DODD. Well, I think that is a complete—any freshman in high school could read the legislative history of the War Powers Act and the debate that went on. To conclude after reading the legislative history of that act that any set of hostilities could be characterized by any President at will as falling under the effect of the War Powers Act or not is a complete misreading of the legislative history, and the background of that act, and the reason for its existence. That is just totally wrong.

Mr. ROBINSON. Well, Senator, let me say, having read the legislative history, and having gone to school in Connecticut since I was raised in your State——

Senator DODD. I know you were, and I am shocked. I was not going to reveal that, you see. [General laughter.]

I was going to save you the embarrassment of having to admit that publicly before the Senate Foreign Relations Committee. [General laughter.]

It is not because of our educational system that you have this aberration of legal understanding. [General laughter.]

Mr. ROBINSON. Senator, let me just say that I have read that history with very great care, and I have read the act with very great care, and this is very serious business. I do not want to make light of the concerns of the Congress, and we do understand them, and we understand the issues that are involved here, and they are of a constitutional dimension, and I recognize that. What I think the administration is trying to do to cut through all of this is to say, hey, let us not get involved in a constitutional or legal debate that, one, may jeopardize the lives of the marines, and of the American diplomatic personnel, because of having some artificial kind of date that will simply give the enemies of the Lebanese Government an extra incentive. Let us not do that. Let us instead involve the Congress. Let us ask for your support. Let us get on with it.

Senator DODD. If I can, Secretary Veliotes, let me ask you this. Congressman Downey of New York yesterday introduced a resolution on the House side, and his resolution says, resolved by the Senate and the House that the United States Armed Forces in Lebanon, having been introduced into hostilities or situations where imminent involvement of hostilities is clearly indicated by the circumstances, quoting section 4(a)(1) of the War Powers Resolution, the President shall submit the report which is required by that section to the Congress within 48 hours after the enactment of this joint resolution, in effect, characterizing it as a section 4(a)(1) situation, and requiring a report under section 4(a)(1) which would trigger section 5.

Would the President veto such a resolution?

Mr. ROBINSON. Senator, I have no idea, and would not want to comment on that, because, as I understand it, there are very sensitive and ongoing discussions between Members of the House and Senate and the White House seeking a means, as I understand it, to see if some agreement might be achieved here. We would welcome the support of the Congress, and we are, as I understand it, in all good faith attempting to reach some kind of means of avoiding what at least would appear to be a rather sterile legal debate.

Senator MATHIAS [presiding]. If the Senator from Connecticut would yield for just a moment, I am intrigued by this exchange. Mr. Robinson says that we should not bog down in legal technicalities, and I would agree with that, and that we should get on with it, and close ranks, and I would agree with that. That is precisely what I have offered you the opportunity to do, to come together, to pass the joint resolution that I offered yesterday by an overwhelming vote, which would be more impressive to the political leaders of the Middle East than any other single thing that I think could happen.

Senator DODD. I think before Senator Mathias came in, that message was also expressed by our colleagues here today.

Mr. ROBINSON. Let me say that I know your proposed language is under very serious review. We have looked at it, and before you arrived there were some comments with regard to the 6-month period provided for in your proposal.

Senator MATHIAS. I said yesterday in the Senate that there is nothing magical about 180 days.

Mr. ROBINSON. So I think it would be in effect premature to comment other than that, but I simply have been trying to make the point here that because of these ultimate constitutional issues which at least I am assuming for present circumstances the Congress as much as the President would like to avoid if possible, having a debate about the Constitution that even the Founding Fathers literally never sought to resolve, and that the Supreme Court has not sought to resolve. All that we are saying is that we do not think it is really useful or constructive. The President does not have to characterize under section 4, so why do we want to start this kind of debate rather than get to the merits of our policy, and avoid these constitutional questions?

Senator SARBANES. Would the Senator yield on that point?

Senator DODD. Certainly.

Senator SARBANES. I think if we go back over American history, some of the sharpest debates in the Congress were held over the questions of a declaration of war. Now, that judgment involving the Congress and the Executive, when reached, provided a united nation as far as the branches charged with making responsible decisions were concerned, in terms of supporting a policy which we were pursuing.

In recent times, that has not always occurred, and the War Powers Act was an effort to return to a situation which I think had marked most of the Nation's history, that such a far-reaching involvement would represent the joint judgment of the President and the Congress. That is what the War Powers Act is intended to achieve, and that is why I think so many of us in the Congress feel that the War Powers Act is applicable here, and that the administration ought to proceed pursuant to it. It is not a matter of legalisms. It involves very fundamental questions of how we make important decisions and how

the Nation decides this, and what kind of posture it is able to present.

Mr. ROBINSON. I understand, Senator, and again, we do agree that the War Powers Act is applicable. We are not saying it is not applicable.

Senator DODD. It is the characterization of it.

Mr. ROBINSON. Well, it is applicable. No one has questioned, as I understand it, the propriety or constitutionality of section 4. No one has ever doubted that.

Senator DODD. What about section 5?

Mr. ROBINSON. Well, section 5, the executive branch, through three or four administrations——

Senator DODD. Except subsection (c).

Mr. ROBINSON. Well, through four administrations, the President tried to avoid it by saying to the Congress, let us cooperate, and just a few months ago, by an overwhelming majority, the Supreme Court struck down section 5(c); section 5(c) is no longer there. It is against the Constitution.

Senator DODD. What about sections 5 (a) and (b)?

Mr. ROBINSON. We are saying we want to avoid those questions, and I do not see anything useful that I can do here by giving a legal opinion, which indeed I am not empowered to do. It would be for the Attorney General as to whether section 5(b) is constitutional or not, but there are serious questions there, and I would have to tell my client that this raises a fundamental question between the powers of the President as the Commander in Chief and the powers of the Congress to declare war, even though the mission in this case is extremely limited.

The forces in Lebanon are there in effect to maintain the peace. The agreement with the Government of Lebanon according to which these forces are present in Lebanon specifically restricts the role that they are able to play within Lebanon. They are not allowed to engage in combat. Even the Government of Lebanon says that.

Senator DODD. My time has just about expired, so let me say this. I appreciate the subtleties of the legal arguments. I guess I am reiterating what Senator Mathias and others have said. I think it is so important that we do not want to fiddle around here legally while Rome burns. There is a very volatile situation politically in the country. The danger is that the political base of support will erode while we are sitting here deciding where to dot the i's and cross the t's, and you are going to find yourself in a situation where you will not be arguing legalistic language, but rather, much more fundamental questions that may very well endanger the lives of our people. That is the danger of this whole matter.

Let me ask you a substantive question on this. Are there any other forces involved in Lebanon that pose a direct threat to the marines? Maybe I ought to address this to General Kelley, but in addition to the Druze and the Phalangists and the various Moslem factions, are there other elements present that are or have been involved in some of the direct hostilities that our U.S. Marines have faced?

General KELLEY. Do you want to take the first crack at that, Jon?

Admiral HOWE. Certainly. If I may, let me begin, and then General Kelley will follow. Obviously, we do face a new situation in Lebanon

now. It happened when the Israelis pulled back to the Awali. It tended to destabilize an already unstable situation there in the Chouf. We have had a lot of factional fighting, but in addition, I think we have seen even more of what has existed all along, and that is a lot of Syrian indirect influence in providing supplies and so forth to certain elements, so you see a more active Syrian involvement.

We have also seen more Palestinian elements in that area.

Senator DODD. Specifically PLO?

Admiral HOWE. PLO, yes. Various factions of it. And we have seen other elements, Libyan, Iranian, et cetera. There are a lot of different factions stirring in that generally unstable situation.

Senator DODD. Directly involved in the hostilities?

Admiral HOWE. I cannot characterize it here in open forum. I would just say that I think most of the action that we have seen from the Syrians is more indirect than direct.

Senator DODD. What about the Palestinians? Did you say, Libyans and who else?

Admiral HOWE. Well, there are certain Libyan elements. There are certain Iranian elements. There are additional Palestinian fighters.

Ambassador VELIOTES. Senator, you asked which of those might be engaged in actions against the marines.

Admiral HOWE. Well, I was leading up to the question.

Senator DODD. But that was my question. Are they, the Libyans and Iranians——

Admiral HOWE. I do not mean to imply that, no. I am saying in this unstable situation in which there is a lot of fighting going on, shelling and so forth, there are a lot of parties involved beyond those that I would characterize as truly confessional Lebanese. What role they are playing with regard, for example, to a shell or a rocket that ends up in the marines area is another question. Most of that fighting, I would gather, but I want General Kelley to answer this, is not directed at the marines per se, but nevertheless it has an unstabilizing influence, and some of it may be.

Senator DODD. Let me make this as my last point. Forgive me if I am wrong, but for the last 5 weeks some of us have been away, so maybe I missed it. I know about the Libyans and the PLO, obviously, but you said Iranians. I have never heard Iranians mentioned. That is why I ask you again, when did the Iranians become involved?

Ambassador VELIOTES. The Iranians arrived in Lebanon at least 1 year ago, I believe. They were always near the Syrian border up in the northern part, down near Balbeck.

Senator DODD. Are they armed?

Ambassador VELIOTES. Yes, armed. There were varying reports, perhaps as many as 1,000.

Senator DODD. Has that been reported in the past?

Ambassador VELIOTES. Yes, it has. Their presence has been reported. I am saying that we have indications that they have been involved, or some of them have been involved in some of the fighting.

Admiral HOWE. If I may, let me just give you a couple of rough estimates. This is the general area. The Iranian estimate I think Nick has characterized correctly, maybe a little less. There are some Libyans. Of course, there are the Lebanese forces and the Druze that you know

about. There is a Communist grouping, and there is the Amal. There is the Marabitun. There are any number of other small groups that are armed, that are operating in the general region.

Senator DODD. Well, I will stop here, Mac. Thank you for letting me run over my time.

Senator MATHIAS. General Kelley, in title 37 of section 310 of the United States Code, there is a provision for combat pay. Are your men receiving combat pay in Lebanon?

General KELLEY. There are two elements under that provision, sir. One is, when the area or the theater is designated as a combat theater, such as we had in Vietnam, under that provision, all personnel within the theater are automatically paid hostile-fire pay. There is another provision which allows the commander on the scene to authorize hostile-fire pay if his troops have come under hostile fire.

Senator MATHIAS. Subject to hostile fire or explosion of mines, that kind of thing?

General KELLEY. Yes, sir. He can then do that on an individual basis. It is that provision, the latter provision, that our marines are operating under right now in Lebanon.

Senator MATHIAS. Does that apply to individual units or to the whole group?

General KELLEY. No, sir, that is by individual, by name.

Senator MATHIAS. Individual marines?

General KELLEY. Individual marines. Yes, sir.

Senator MATHIAS. Could you give us an estimate of how many in terms of numbers?

General KELLEY. Well, I will be very honest with you, Senator Mathias. With the rounds that we have had that have been impacting into the area around Beirut International Airport, I am going to say without fear of contradiction that every marine who is on the beach is, during that month that there is impact, going to get hostile-fire pay.

Senator MATHIAS. Well, I think they should. I am for it, because I think they are under hostile fire, and I think that is what the Congress intended in the adoption of that provision of law. I think it applies in this situation.

General KELLEY. It was a great morale boost for them, too, Senator. [General laughter.]

Senator MATHIAS. I only hope they can spend it all in good health.

General KELLEY. I want to give you a gratuitous, unsolicited comment, Senator. You just came in a short time ago, but I have to say in all honesty, Senator Mathias, your comments were well taken. Let me say this has been a rewarding experience for me, because what I have heard this afternoon is unanimous support by the Members of the Congress who spoke here, unanimous support for retaining our marines in Lebanon as being the most viable and realistic option.

Senator MATHIAS. Being an essential element at the moment.

General KELLEY. That, sir, is a rewarding experience, and it has sort of narrowed down, I suppose, now, to the constitutional modalities of doing that.

Senator MATHIAS. Let me go on a little bit about the position of the marines in Beirut. Is the current deployment militarily sound? I mean, you did not have a total freedom of action as to where you were going to put people. What kind of exposure is there?

General KELLEY. Well, sir, we did, in a sense. We have been given what I would characterize as a tactical area of responsibility. That is, a geographical area on the ground that was assigned to the marines.

Senator MATHIAS. That was rather more a political than a military decision.

General KELLEY. Well, it was and it was not, because the then three members of the multinational force split up Beirut. We took the southern portion, which happens to be in the area of the Beirut International Airport. So we have that area. The defense, the physical disposition of the marines on that particular area that has been assigned to us, has been our responsibility and up to the commander on the ground.

Senator MATHIAS. Well, now, what sort of capabilities would you have, or maybe perhaps first I should ask you this. What situation with that ring of mountains that overlooks the city and the airport area, who occupies that high ground?

General KELLEY. Right now, it is the Lebanese Armed Forces who occupy that high ground, principally.

Senator MATHIAS. The government forces?

General KELLEY. The government forces, yes.

Senator MATHIAS. That therefore does not immediately pose any problems for your men there?

General KELLEY. The problem right now that is posed to the marines is from the itinerant gunner in a well populated area so you cannot see him, who throws a few rounds here and there, really designed more for the Lebanese Armed Forces but which impact into our area. Then he disappears. Or, conversely, there are occasions when we have had those same types of itinerant gunners on the high ground who have fired direct or indirect fire down into the low ground, which happens to impact into the area occupied by the marines.

Senator MATHIAS. Are you comfortable with the force levels that are now available there and the marines you have on shore, plus the forces that are lying off shore?

General KELLEY. Yes, sir, considering our mission, and our mission, Senator Mathias, to reemphasize it, is a presence mission. With that mission I am very comfortable, as well as with the forces there, the forces that are off shore, and the support that is now available to the commander on the beach in the event of an emergency provided by the carrier battle group as well as the naval gun fire support ships on the gun line.

Senator MATHIAS. So you do not feel they are exposed to any extraordinary risks?

General KELLEY. Well, in our profession, Senator Mathias, there are always risks.

Senator MATHIAS. I am saying extraordinary risks.

General KELLEY. Extraordinary risks? No, sir.

Senator MATHIAS. In connection with the forces that are lying off shore, do you know, or perhaps Secretary Veliotes knows, whether the President intended to include those forces in his August 30 report to the Congress.

Admiral HOWE. I do not know the technical question there.

Senator MATHIAS. In other words, if those troops went ashore, it would be a substantial augmentation of the forces on the beach?

Admiral HOWE. To answer you, not in a legal sense, but in a practical sense, what we have been doing is increasing our strength off shore and not in Lebanon, so that we would have the ability, so the marines would have the ability to better defend themselves, and we would also be able to help our MNF allies who are also strengthening their off shore capability. We see evidence of British fighter bombers from Cyprus and the French aircraft carrier there, all of us being able to take more actions in self-defense, but it is an off shore presence. It is not with an intention of reinforcing the beach per se. There may be a few artillery pieces or things put ashore, but the idea is more the naval gunfire and air that could be available if the situation should require it.

Senator MATHIAS. Then what I am hearing you say is, they have not been formally reported to the Congress as being present in Lebanon up to this time.

Admiral HOWE. I have to ask our legal adviser that.

Mr. ROBINSON. Maybe I could help here a bit. We are very aware, of course, of the provisions of the Lebanon supplemental that require congressional authorization if there is a substantial expansion in the number or role of United States Armed Forces in Lebanon. At the moment, as I understand it, the consensus is that there has been no such substantial expansion in the number or the role of the forces. I am not sure I understand the relationship of your question to the War Powers Resolution, where we did report on August 30 as a result of the initial casualties.

Senator MATHIAS. I just want to ascertain whether our accounting is in agreement on these questions.

General KELLEY. Well, as I understand it, the 31st Marine Amphibious Unit, Senator, most of the forces that you would be talking about, and the date may be critical to you, did not arrive until yesterday, September 12 at 9 o'clock, as a matter of fact, our time, off the coast of Lebanon.

Senator MATHIAS. I think that answers the question.

Admiral HOWE. I would just add one thing also, Senator. We have always had in the back of our minds the thought that the presence of an aircraft carrier in the Mediterranean provided a degree of extra protection for the marines should it be needed. So this is from the first day the marines landed in Beirut.

Senator MATHIAS. Let me ask a question that is perhaps more wishful than hopeful. There was a Saudi attempt in Paris in the last week of August to negotiate a cease-fire to be supervised by United Nations observers. As I understand it, Jumblatt had originally agreed to that, but then pulled back from it. It has been reported that Prince Bandar has gone to Damascus to try to revive that plan. Is there any action in that department?

Ambassador VELIOTES. Mr. Chairman, I really cannot address the details of the negotiations in open session, for obvious reasons, but in answer to your question, I will say there is truth to the fact that the Saudis are trying to be as helpful as possible in brokering a cease-fire.

Senator MATHIAS. Thank you.

Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

Let me apologize first for my tardiness. I just want to make a statement that my own view—and I was going over the transcript of this exchange—my own view is that the President should report and obtain authority under the War Powers Resolution, and he should do so in the full knowledge—at least this is my view—that he will have a majority of support for him in the maintenance of the troops there. I cannot fathom why he does not wish to obtain authorization under the War Powers Resolution. In fact, the chairman of the committee and I wrote a joint letter on September 24, 1982, to Secretary Shultz asking that this be done. Now, with the rise in hostilities, I think it is all the more urgent to do so. I understand, Mr. Robinson, that you told Senator Sarbanes that even if the President did submit a report under section 4(a)(1), section 5(b) would only come into play to the extent that it is constitutional.

My question to you is: In your view as a lawyer, and in view of the severability clause at the end of the act, to what extent is section 5(b) constitutional?

Mr. ROBINSON. Well, Senator Pell, again, I would like, with all respect, to defer on that issue, because I do not think that is a question that we need necessarily address, and indeed for me it is not appropriate. It would more appropriately be addressed to the Attorney General. We are seeking in effect to avoid those issues, and we would like the involvement of the Congress. The President wants that, and we have indeed reported—again, I am sorry to repeat myself for those who have heard this earlier, but the President has reported under the War Powers Act. He has fulfilled the law in section 4 of the War Powers Act. He is not required to designate under which subsection of section 4 he is going to file. So, in our view he has fully complied with the law. He has consulted with the Congress fully, and he wishes your support.

Senator PELL. Well, I disagree with you. I do not think he has fully complied with the law. He has, however, our support for what he is doing there, and I would suggest to you that perhaps from a political viewpoint it might be good to reconsider that position. I believe, Mr. Robinson, it was also you who raised the point that section 5(b) is applicable only to the extent that it is constitutional. That is the reason I raise it. I realize this is properly a decision for the courts, but in any case, as one additional voice on this committee, I do think the President should report under section 4(a)(1) and I intend to support what he is currently doing in Lebanon.

I have another question for General Kelley. As I understand it, the control of the village of Suq al-Gharb is now being contested by the Lebanese and non-government forces. If it looks as if the Lebanese Army would lose that village, are you in a position to say to what extent we would go? Would we use Air Force, air power, land, or the marines forces to avoid the loss of that village, or would you rather hold back on that at this time?

General KELLEY. I would rather hold back on that at this time, Senator Pell.

Senator PELL. Do you consider it strategically a very important location?

General KELLEY. Well, Suq al-Gharb is strategically important to the Lebanese in view of the fact that it controls the high ground to the south of Beirut, so to answer your question, yes, sir, I do.

Senator PELL. Thank you very much, General Kelley.

Senator MATHIAS. Let me tag on one question with respect to Suq al-Gharb. Is there any evidence that either the Palestinians or Syrians are involved in that fighting at this time?

Admiral HOWE. Again, sir, I would have to qualify this a little bit, and again, this gets into fairly sensitive intelligence, so I will just be very general. Very generally, I would say that there is quite a bit of evidence of indirect Syrian involvement. That is, their surrogates are involved, and they are providing provisioning and so forth without perhaps directly participating.

As far as the Palestinian fighters that have been associated with the Syrians, and as you know, there is a split going on in the whole PLO movement, there has been some evidence of their involvement as well, but I cannot get into the details here, sir.

Senator MATHIAS. On a scale of 10, would it be a major disaster if the government should lose that battle?

General KELLEY. On a scale of 10? That is a tough one. Let me say it is way above five. Way above five.

Senator MATHIAS. I hear you.

Senator Sarbanes.

Senator SARBANES. I have nothing further at this time.

Senator MATHIAS. Senator Pell.

Senator PELL. I have one other question, which is also for General Kelley.

In your view, in view of the large amount of casualties that our marines have taken, is there any thought in your mind that perhaps our forces are being more targeted than perhaps the French, Italian, or British?

General KELLEY. No. sir. First of all, to put it in a proper perspective, we have had, as of this morning, Senator Pell, we have, unfortunately, had four people killed in action, and we have had 39 wounded in action. The rounds that have been landing in the vicinity of Beirut International Airport have been in a random pattern that it would be impossible to say that our marines are being targeted. So I would not say that we have any definitive information that would indicate that marines are actually being targeted by a hostile force.

Admiral HOWE. May I add one point, Senator Pell? Without getting specific, because I do not think it is the business of the United States to announce casualties of other countries, I just would like to say that other countries have suffered more casualties, other members of the MNF who are there with us have suffered more casualties and deaths than we, numbers of deaths in the range of 20 or so for the whole MNF, and the number of wounded, of course, is much higher.

Senator PELL. Thank you.

Senator MATHIAS. How many casualties have the French sustained? Do you recall?

Admiral HOWE. I do not think I should get specific, although I will tell you afterward what my figure is, Senator, but it is more than our own.

Senator MATHIAS. Yes, I believe it is substantial.

Well, gentlemen, we are very grateful to all of you for being here. General Kelley, I think it might not be inappropriate to ask you to convey to the force in Lebanon the kind of sentiments that you have heard expressed here today, and our appreciation for what they are doing, our respect for what they are doing.

General KELLEY. Senator, I must tell you they were watching carefully the fact that I was here. This is the first time that I as a Commandant have appeared before this Congress, and if what I saw today is a sensing of the Congress, I am going to convey a very proud report to them, sir.

Senator MATHIAS. Senator Pell.

Senator PELL. I also would like to join with Senator Mathias in those thoughts, and leave with the administration the thought, too, that the American people and the world around us want to be assured that we are going into this in a unified way, and if the President seeks authorization under the War Powers Resolution, and we support him in what he is doing, that gives exactly that message, but if there continues to be this hostility and friction over whether he is acting properly or not, the outside world may lose sight of the fact that we are behind the President in what he is actually doing there. So from the political viewpoint, in the long haul, I think he would be much better off to move down this path, and frankly, it would help you to look ahead, which you will probably have to do anyway in the end.

Senator MATHIAS. You remind me of my father's advice. He used to say the thin file with the release in it is best.

Gentlemen, thank you all very much. This committee stands adjourned, subject to the call of the Chair.

[Whereupon, at 4 p.m., the committee adjourned, subject to call of the Chair.]

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